

CAL-OSHA ADVISORY
COMMITTEE
MINUTES of MEETING
September 6, 2010



Department of Industrial Relations
John Duncan, *Director*

Division of Occupational Safety & Health

Len Welsh, Chief

Chris Lee, *Deputy Chief* of Cal/OSHA Enforcement
Edward F. Callanan, *Assistant to the Chief*
(510) 286-7000

Cal/OSHA ADVISORY COMMITTEE
MINUTES OF MEETING – September 2, 2010
Department of Water and Power
111 North Hope Street, Auditorium, “Level A”
LOS ANGELES, CALIFORNIA

OPENING REMARKS

Chris Lee, Deputy Chief for Enforcement, Division of Occupational Safety and Health (DOSH), called the meeting to order at 10:05 a.m. A copy of the attendance roster is attached to these minutes.

Mr. Lee expressed the regrets of Len Welsh, Chief of DOSH, who was unable to attend this meeting because he was required to participate in meetings related to budgetary considerations. Mr. Lee announced that the next meeting of the Cal/OSHA Advisory Committee will be held on November 4, 2010 in Oakland at the Elihu Harris State Building, 1515 Clay Street, Suite 1304. The meeting will be called to order at 10:00 a.m.

ADMINISTRATIVE REPORT/ENFORCEMENT REPORT

- 1) As of today, September 2, there is no progress to report on the status of the state budget which is now 55 days late.
- 2) The Governor’s office has advised all State government departments that a hard freeze is in effect, meaning no new hires are allowed, no promotions, no retired annuitants, no student assistants etc., may be added to the State roster.
 - A) State furloughs have been reinstated for three Fridays of each month until further notice.
 - B) No travel expense claims are being processed which means that employees must bear the burden of such expenses until a budget is in place. This provides a challenge for many of our field staff and administrators.
 - C) The above cited restrictions are in addition to our mandatory 5% reduction in the workforce cap, 15% reduction in operating equipment and expenses, as well as a 20% cut in our state vehicle fleet. DOSH remains committed to our mission of protecting California workers.
- 3) The Enhanced Federal Annual Monitoring Evaluation Report has been a fairly protracted process for us as it has been for the other State Plan states; we are expecting a revised draft report in mid-September.

Cal/OSHA has been working diligently to respond to the 72 findings and recommendations that were in the initial draft, and when the revised draft is received we will have several days to comment on that draft. We feel we are well positioned to forward

a response signed by John Duncan, Director of the Department of Industrial Relations, to Federal OSHA.

- 4) DOSH is nearing the end of its involvement with the American Recovery and Reinvestment Act (ARRA) which became effective on July 1, 2009 and is a 15 month grant. The total DOSH grant was \$1.5 million. We had projected making 600 inspections with the focus being in construction and green manufacturing and related establishments. As of the end of August we have conducted 1100 inspections in those industries while using up available funds.
- 5) In the area of Heat Illness prevention, Cal/OSHA has conducted (as of August 15) 2160 heat coded inspections. There is a continuing trend by employers to comply with the standard; however, the failure to have a written program is still the most cited violation.
 - A) There are currently five unconfirmed fatalities; four are in agriculture and one in construction.
 - B) As to non-fatal illnesses, there are 12 such instances (6 are confirmed as heat related and 6 are currently under investigation) 56 complaints have been received and 7 Orders Prohibiting Use (OPU) have been issued, all in agriculture.
 1. There have been approximately 1300 outreach activities to various stakeholder communities (by the Cal/OSHA Consultation Service) and others, particularly to organizations and entities in the agricultural industry.
 2. As noted at our last meeting the State Legislature appropriated a onetime fund of \$1.5 million to promote outreach, education and training as they relate to heat issues. Cal/OSHA has been involved in preparing materials for distribution to relevant communities, billboards, and the use of radio spot announcements to advance this goal.
- 6) Federal OSHA has recently opened two new area offices in this region (which is headquartered in San Francisco). The new offices are in Oakland and the director is Van Howell and the other is in San Diego and the Director is Tom Carle, both have long experience in the field of Occupational Safety and Health. Mr. Howell will be responsible for dialogue with Cal/OSHA and assist in the monitoring of our program.
- 7) Mr. Lee updated information on the following cases:
 - A) Bimbo bakeries-the latest accident in a long series of accidents primarily related to unguarded machinery occurred where an employee lost a middle finger while attempting to remove a blockage of dough while reaching into an unguarded opening above an access door. The Division has cited Bimbo in the recent past for several willful-serious violations primarily related to unguarded equipment and has assessed penalties over \$123,000. However, the company is understood to be undergoing reorganization and has reached out to the Division through communications to Len Welsh and Amy Martin, Chief Counsel, on pending issues.

olved in moving a master valve in an oil rig and they failed to take preventative measure to offset the pressure that was built up and when they pulled the four lock screws it lifted a 7,700 pound piece of equipment, resulting in the injuries cited above.

- 8) The Division has submitted its 23(g) grant application and our 21(d) consultation agreement application to Federal OSHA. This year, Cal/OSHA will receive \$73.9 million on the 23 (g) enforcement grant and \$ 9.3 million on the consultation agreement, thus we will have some \$83 million for our enforcement, outreach and consultation goals. Mr. Lee thanked Vicky Heza for her contributions in preparing these grant applications.
- 9) Nick Gleiter, District Manager of the Cal/OSHA Oakland office, yesterday (September 1) put on a program to train building inspectors to recognize and report unsafe conditions on construction sites. This is the start of an initiative ordered by Hilda Solis, the US Secretary of Labor, who identified eleven metropolitan areas and directed that a pilot program be undertaken to train building inspectors in recognizing activities that are hazardous and the importance of relaying such information to the appropriate OSHA office, whether Federal or State.
 - A) The Cal/OSHA San Francisco District Office has had such a program in operation for several years.
- 10) The Division has been investigating a fatality of a worker who died of exposure to Hanta virus. The victim was an employee of the State Park System at Bode State Park, outside of Bridgeport, and the Division is collaborating with the California Department of Health and the Mono County Health Department in investigating the cause of death. It is believed that the Hanta virus is carried by deer mice.
- 11) The Economic & Employment Enforcement Coalition (EEEC) Unit issued a citation to Grimmway Farms for violation of section 34412 (b) for having on the job cages affixed to tractors for the purpose of transporting workers; only the operator or someone instructing the operator are permitted on a tractor. DOSH anticipates following up on this matter and will be involving stakeholders in a dialogue on the issue.

CONSULTATION SERVICE REPORT

Vicky Heza, Program Manager, Cal/OSHA Consultation Service, reported the following:

- 1) Cal/OSHA will be enrolling its 77th employer in its VPP Star Program tomorrow (September 3), the employer is Gonzalez Winery, the largest winery in Monterey County; they process 65,000 tons of fruit per year. The Division has been working with this employer for over two and a half years assisting them in addressing health and safety concerns such as guarding and ventilation.

contract with someone who can publish it in the pocket size. However, the updated material is on our website. Once we are able to find a printer willing to print the Guide in pocket size, the public will be notified.

- 3) DOSH has been working with Mexican Consulates over the past two weeks as they have been preparing to start their annual "Labor Rights" week celebrations. We will be providing staff to outreach attendees at these events in Fresno, Los Angeles, Sacramento, San Bernardino, San Diego, San Francisco, and San Jose. This event provides various State and Federal agencies a chance to participate in programs that advises employees and employers of their rights and responsibilities under the law.
- 4) The Consultation Service expects to meet or surpass the performance goal it set out to achieve by the end of the Federal fiscal year, September 30, 2010.
 - A) The goal in construction was 900 onsite visits and/or interventions and this goal has been surpassed with a total of nearly 1,200 such visits.
 1. The service had set a goal of 1,025 visits to employers on the High Hazard list and we are currently at 800 but anticipate reaching that goal, since current figures were generated as of the first of August.
 2. Our goal was to award Golden Gate recognition to 20 agricultural employers but we have exceeded that goal by enrolling 47 such employers.
 3. The total number of heat seminars conducted was 190, while our goal was 60. It should be noted that these achievements have been obtained despite budgetary limitations, furloughs etc., therefore we expect to increase our goals for the coming fiscal year with the expectation of reaching or exceeding them.

RESEARCH & STANDARDS SAFETY REPORT

Joel Foss, Acting Principal Safety Engineer, reported on the Research and Standards Safety Unit Activity.

Joel Foss, rather than giving a report, introduced Senior Safety Engineer Phillip Yow of the Crane Certifier Accreditation Unit, who gave a report about upcoming changes to Title 8 requirements for crane safety, and crane operator certification. These changes are the result of recent changes to crane requirements in Federal construction safety standards.

These changes to the Federal requirements are the product of the Crane and Derrick Negotiated Rulemaking Committee, an advisory committee which has been meeting since 1998. Changes to CFR 1910.269 (electric power transmission and distribution) and 1926.1427 (crane safety) became effective August 9, 2010. State programs, including Cal/OSHA, must immediately adopt standards that are at least as effective as these new Federal requirements.

In many cases, California crane requirements are already more strict, and no change will be necessary or even desirable. One example of this condition may be the Title 8 prohibition on working within a set clearance around electric power lines (depending on voltages, but usually 10 ft.). New language in 1910.269 sets clearances, but allows employers to operate cranes inside these clearances, when found necessary by a qualified person. The Division feels strongly that our existing prohibition on such work is stricter than the new Federal rules.

On other issues, changes will be necessary. One example is the certifying of crane operators, which is currently required in California for cranes in Section 5006.1 of the General Industry Safety Orders, except for operating cranes with less than 25 of boom and less than 7 ½ tons rated capacity. The new Federal requires operator certification of any crane over 1 ton capacity; it also has stricter requirements than California for de-rating cranes to meet the minimum rated load exception. These changes will have to be adopted into Title 8, and will mean dramatically more crane operators requiring certification.

One important regulatory issue is where these new standards will go in Title 8: the new Federal crane requirements are in their construction standard, whereas in California crane requirements are in the General Industry Safety Orders. The Division feels strongly that any new requirements added to Title 8 should be made to existing GISO standards, rather than creating a whole new set of construction crane standards in the California Construction Safety Orders.

Phil Yow is working closely with Standards Board staff, who are currently taking the new Federal standard apart, and selecting what changes need to be adopted to remain as least as effective as the new Federal standards. Foss identified Phil Yow as the point of contact within the Division for anyone having questions about the upcoming changes. His telephone number is (714)567-7142.

RESEARCH & STANDARDS HEALTH REPORT

Steve Smith, Research & Standards Health Unit, provided the following report:

1. The [section 3395 heat illness prevention proposal](#) was adopted by the Standards Board last month and is currently at OAL pending approval. The original proposal went to public hearing in October, 2009 and a follow up advisory meeting on the proposal was also held on November 16th in Oakland. Also this summer, the Department launched a new outreach campaign of heat training classes and related training materials posted on the Department's [heat website](#). [Amalia Neidhardt](#) is the contact person for heat related information at 916-574-2993.
2. This month the Standards Board will consider adopting a new [Section 5197](#), Diacetyl. The proposal was developed with the assistance of the 2007 advisory meetings on [Diacetyl](#) and the findings of an ongoing targeted inspection program focused on the flavorings industry. [Mike Horowitz](#) at 510-286-7009 is the contact person for this proposal and related activities the Division is conducting in the flavorings industry.

3. In response to a petition (# 513) granted by the standards board this year, an advisory committee was held in Los Angeles on June 29th to consider [amending Section 5193](#) regarding bloodborne pathogens to specifically address health hazards in the adult film industry. The next advisory meeting is scheduled for September 14th in Oakland. The contact person for this advisory committee is [Deborah Gold](#) at 510-286-7006.
4. The section [5155](#) HEAC met June 23rd in Oakland to discuss arsine, benzyl chloride, wood dust, gallium arsenide, tetrabromoethane and updating the priority list of substances. Next month on October 6th the Feasibility Advisory Committee (FAC) will meet to discuss the HEAC recommend PELs for trichloroethylene, benzyl chloride, wood dust and tetrabromoethane. Regarding the remaining substances that went through the PEL AC process in 2001 to 2005, a [section 5155 proposal](#) was adopted by the Standards Board last year and went into effect on August 3rd. The contact person for the PEL update process is [Bob Barish](#) at 510-286-7001.

LEGAL UNIT REPORT

Due to several conflicts in scheduling there was no member of the Legal Unit at this meeting, hence no report is available.

APPEALS BOARD REPORT

Candice Traeger, Chairwoman of the Cal/OSHA Appeals Board, reported the following:

- 1) There is currently no backlog, and the process rate stands at 10 months with a settlement rate of 88%.
- 2) Appeals filed have gone down every year since 2007.
 - A) Between 2007-2010 over 1,300 fewer appeals have been filed. (585 cases)
 - B) Appeals resolved have gone down every year since 2007.
- 3) Between 2007 and 2010 over 2,400 fewer cases have been filed (1,005 cases)
- 4) Issuance of DAR's are at an all time high through July (15) while at the same time last year the number was 6.
- 5) The Board has approved several regulatory proposals including the historic expedited abatement project.
- 6) The next meeting of the Boards Advisory Committee will be held on October 28, 2010.

The agenda is expected to include:

- 1) working on the proposed video hearing project and
- 2) determining the Boards agenda for 2011

- 7) Training workshop on preparing cases is scheduled for September 22, 2010 in Los Angeles and September 23, 2010 in Sacramento.

STANDARDS BOARD REPORT

Marley Hart, Executive Officer of the Cal/OSHA Standards Board reported the following:

- 1) The adoption of the outdoor heat illness amendment has been filed with the Office of Administrative Law and we expect to hear back from them no later than October 5, 2010. The standard will become effective thirty days after receiving OAL's approval.
- 2) The Diacetyl proposal will be before the Board for adoption at the Board's September 16 meeting in San Diego. The final text and final statement of reasons will be posted online.
- 7) Two members of the staff are working full time on studying state regulations on a line by line comparison with the new federal regulations on cranes and derricks, to determine where our standards meet or exceed the new federal standard and where the state will have to adopt new standards that will meet the federal standard.
- 8) An advisory committee will meet in Sacramento on September 29, 2010 to discuss Petroleum Safety Orders, sections 6755 and a new section 6799.1, with regard to the design, construction and use of chains and wire rope access equipment (Jacob's ladders) in refineries. This meeting is in response to a petition to the Board.
- 9) The Division has two committee meetings scheduled:
 - A September 14, to discuss the adult film industry relating to the issue of bloodborne pathogens.
 - B. October 6, to discuss matters relating to permissible exposure limits.
- 10) All seven members are on board as announced at the last meeting of this committee, and are taking an active participation in board business. There is no longer a vacancy on the Board.
- 11) Copies of the Board's "Calendar of Activities" for September are enclosed with these minutes.

OPEN DISCUSSION

- 1) In response to a question relating to the Divisions concern with the Adult Film Industry, it was stated that we are reviewing the various issues in committee meetings and particular concerns of individuals can be discussed with a member of our staff, Deborah Gold at (510) 286-7006.
- 2) It was suggested that the Division look at the link between the interaction of building permits and the OSHA permit requirements and make it a matter for training programs.
- 3) It was suggested that the old benchmark numbers for personnel as recommended by Federal OSHA and current thinking be made available. Alan Traenkner, Special

been involved in the field for over 15 years and a union representative for 10 years. He urged the Appeals Board to continue to allow unions to be recognized as a third party, as he has never heard of a request for third party status being refused and recommended that such a policy not be changed. Ms. Traeger noted that the policy has not been changed but existing protocol must be observed and will look into the history of the issue.

- 5) In response to a question, Steve Smith stated that the bloodborne pathogens standard applies to all workers who are exposed to blood or other bodily fluid, including those in trash collection in the sanitation industry.

ADJOURNMENT AND NEXT MEETING:

The meeting adjourned at 11:59 a.m. The next meeting of the Committee will be as follows:

DATE: November 4, 2010 (**Thursday**)

TIME: **10:00 a.m.**

PLACE: Elihu Harris State Building
1515 Clay Street-Suite 1304
Oakland, California